Milford Plains Limited Partnership d/b/a Hampton Inn *and* Local 371, United Food and Commercial Workers Union, AFL–CIO, CLC. Cases 34–CA–5228, 34–CA–5376, and 34–RC–1031

December 16, 1992

DECISION, ORDER, AND CERTIFICATION OF RESULTS

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The issues addressed here are whether the Respondent violated Section 8(a)(1) by certain statements made to employees during a union campaign and whether it violated Section 8(a)(3) and (1) by discharging three employees for their union activity.[1]

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions as modified and to adopt the judge's recommended Order as modified. For the reasons set forth below, we disagree with the judge that the Respondent violated Section 8(a)(1) by threatening employees that their efforts to unionize would be futile and they would be subject to violence if the Union were selected.

1. The judge found that Respondent in mid-May threatened that the employees' efforts to organize would be futile. We disagree. In mid-May, the Respondent's director of operations, Anthony Evangelista, came into a guest room which employee Albertina Atilho was cleaning, and commented to Atilho that she was wearing union buttons. Evangelista said ''we're against the Union, we don't want the Union in here because we don't have no money . . . trying to get money from us is trying to get water from a stone.'' At that point, they both laughed. Evangelista added that the Union might promise sick days and other benefits, but the employees could not get them ''if we don't have any money because we have a lot of creditors.''

The natural import of Evangelista's comments was not that the Respondent would take reprisals against the employees for their union activities but simply that, in view of the Respondent's current financial condition, it could not afford the benefits the Union was promising. The statement was merely a statement as to its view of its financial position and, without more, was insufficient to threaten that the employees' efforts to unionize would be futile.[4] We shall, therefore, dismiss this allegation.

2. The judge found that the Respondent violated Section 8(a)(1) by posting a notice threatening its employees with violence if they selected the Union. We disagree.

The notice stated:

WHAT CAN THE UFCW GIVE YOU?

1. The *right to walk* a picket line.
2. The *right to go* out on strike.
3. The *right to pay* dues to the United Food and Commercial Workers Union.
4. The *right to throw* brickbats at cars of nonstrikers—even if they are your friends.
5. The *right to fear* for your safety and the safety of your loved ones if you oppose United Food and Commercial Workers Union strikes.
6. The *right to worry* over whether the United Food and Commercial Workers Union will let you work! [Emphasis in original.]

The judge found that the statements in the notice referring to throwing objects at automobiles and ''fear for your safety'' exceed the permissible campaign materials protected by Section 8(c). He, therefore, found that by this notice the Respondent made an unlawful threat that violence would result if the employees selected the Union.

[1] On June 5, 1992, Administrative Law Judge D. Barry Morris issued the attached decision. The General Counsel and the Respondent each filed exceptions and a supporting brief. The Respondent filed an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The General Counsel and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] Member Devaney agrees with the judge that the Respondent violated Sec. 8(a)(1) when its director of operations, Anthony Evaneglista, told employee Annette Espino that if the employees ''go on strike, we lose our jobs.'' However, he does not rely on the judge's citation to *Baddour, Inc.*, 303 NLRB 275 (1991), in which he dissented, because he views the language used there to be clearly distinguishable from that employed here by the Respondent.

[4] *Evans Bros. Barber & Beauty Salons*, 256 NLRB 121, 128 (1981), cited by the judge is distinguishable. There, the employer asked an employee if he wanted to remain in the employer's employ and then stated that the union could not do the employees any good because the employer could not afford it. Here, the Respondent's statement was much more limited.

The notice does no more than present the possibility to the employees that bringing a union in may result in strikes and that strike misconduct might then occur.[5] An employer may properly discuss strikes or accompanying violence as a possible consequence of a union entering the scene.[6] The Respondent refers only to possible violence, not by it, but by prounion supporters, i.e., conduct beyond its control. This constitutes no more than an expression of opinion as to one possibility of what might happen should the Union win. It is not a threat by the Respondent that it will take coercive action, such as violence, against the employees because they have selected the Union.[7] We, therefore, also dismiss this allegation that the Respondent violated Section 8(a)(1) by threatening employees with violence if they selected the Union.

AMENDED CONCLUSION OF LAW

We delete the judge's Conclusion of Law 4 and substitute the following for his Conclusion of Law 3:

''3. By threatening employees with more onerous working conditions and loss of benefits if the Union were selected and by threatening loss of jobs as a result of a strike, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Milford Plains Limited Partnership d/b/a Hampton Inn, Milford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Threatening employees with more onerous working conditions and loss of benefits if they select the Union; and threatening employees with loss of jobs as a result of a strike.''

2. Substitute the attached notice for that of the administrative law judge.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Local 371, United Food and Commercial Workers Union, AFL–CIO, CLC, and that it is not the exclusive representative of these bargaining unit employees.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with more onerous working conditions and loss of benefits if they select the Union; or threaten employees with loss of jobs as a result of a strike.

WE WILL NOT discharge employees for activities protected by Section 7 of the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer full and immediate reinstatement to Debra Coover Bennett to her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and WE WILL make her whole for any loss of earnings that she may have suffered by reason of her discharge, with interest.

MILFORD PLAINS LIMITED PARTNERSHIP
D/B/A HAMPTON INN

Thomas W. Doerr, Esq., for the General Counsel.
S. Mark Klyza, Esq. (Kullman, Inman, Bee, Downing & Banta), of New Orleans, Louisiana, for the Respondent.
Gerald Richman, Esq. (Shapiro, Shiff, Beilly, Rosenberg & Fox), of New York, New York, for the Union.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in Hartford, Connecticut, on February 10–12, 1992. Upon charges filed on May 20 and August 22, 1991,[1] a consolidated complaint was filed on October 31, alleging that Milford Plains Limited Partnership d/b/a Hampton Inn (Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

Pursuant to a Decision and Direction of Election dated June 13, an election by secret ballot was conducted on July 12. Fourteen votes were cast for Local 371, United Food and Commercial Workers Union, AFL–CIO (the Union) and 14 votes were cast against the Union. Two ballots were chal-

[5] We agree with the Respondent that *General Dynamics*, 250 NLRB 719, 722 (1980), cited by the judge, is distinguishable. There, the Board found that the employer's numerous and graphic references to strikes and violence, as well as loss of business, jobs, and benefits amounted to veiled threats and created an atmosphere of fear.

[6] Cf. *Louis Gallet, Inc.*, 247 NLRB 63, 66 (1980), enfd. 642 F.2d 443 (3d Cir. 1981), in which the employer went beyond lawfully raising the possibility of a strike and accompanying violence to unlawfully state that a strike was inevitable.

[7] See *Benjamin Coal Co.*, 294 NLRB 572, 585–586 (1989).

[1] All dates refer to 1991 unless otherwise specified.

lenged. On July 17, Respondent filed timely objections to conduct affecting the results of the election. On September 25, the Regional Director issued a supplemental decision, in which he overruled the objections but further ruled that the hearing on the challenged ballots of Scott Alter and Margarita Alicea be consolidated with the hearing on the alleged unfair labor practices. On November 21 the Regional Director issued an order consolidating the cases for hearing before an administrative law judge.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by all the parties on April 30, 1992.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware Limited Partnership, with its principal place of business in Milford, Connecticut, has been engaged in the operation of a motel. It annually derives gross revenues in excess of $500,000, and purchases and receives at its facility goods valued in excess of $5000 from points located outside the State of Connecticut. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

During February and March some of Respondent's employees began attending union meetings and during April they started wearing union buttons. Authorization cards were signed in May and on May 7 the Union requested recognition. The Union filed a certification petition on May 8.

2. Events of early May

Albertina Atilho began her employment with Respondent as a housekeeper/maid on April 27. She appeared to me to be a credible witness. She testified that approximately 2 weeks after she began her employment, Anthony Evangelista, Respondent's director of operations, came into a guest room which Atilho was cleaning, told her to sit down, and said to her:

> I notice you're wearing Union buttons on your clothes and I said yes. And he said you know that we're against the Union, that we don't want the Union in here because we don't have no money . . . . And he said trying to get money from us is trying to get water from a stone.

Atilho also credibly testified that several days after the conversation with Evangelista, Rebecca Forsythe, general manager of Respondent, approached her while she was cleaning a room and told her that ''we're against the Union because we don't have any money.''

3. Events of mid-May

Linda Cummings began her employment with Respondent in July 1990 as a housekeeper. She signed an authorization card on behalf of the Union on April 25 and started wearing a union button at work shortly thereafter. She testified that after she began wearing the union button, Florence Hughes, the executive housekeeper of Respondent, told her that if the Union came in ''they'd make it harder on us because they'd have to enforce the rules more, be more strict. We could no longer be friends or anything. You know, she couldn't do favors for us like she used to.'' Cummings testified that Hughes also told her that ''she was going to clock us on our breaks . . . and if we took one minute after . . . instead of getting oral warnings, we would get written warnings.'' Hughes was not called as a witness.

4. Meeting of May 29

A meeting was held of the employees on May 29 at which time Paul Underhill, President of Respondent, addressed the employees. Atilho testified that Underhill said:

> If we do get the Union in, that it was going to be like the Greyhound Bus strike, that it would be a big mess. And if we did go on strike with the Union, that we had better put our walking shoes on . . . and he will replace us with a maid . . . service.

Debra Coover's recollection of Underhill's statement at that meeting was that he said ''he could rehire new people to take our place; and if we didn't like it, we could put on our walking shoes and keep on walking.'' Similarly, Cummings testified that Underhill stated at that meeting ''if we wanted to go strike, that we would be replaced; he would have other workers come in and replace us; if we wanted to go on strike, then we could put our walking shoes on and keep on walking.''

Underhill testified that he read the speech from a prepared text. The speech, which is in evidence, states, in pertinent part:

> If any of you have your heart set on all of those promises of the Union, you better buy your walking shoes now, get them broken in good and paint your picket signs, because you're going to be on strike and on strike for a good long time.

4. Events of June 15

Annette Espino began her employment with Respondent in November 1990. She testified that about 2 weeks after the meeting with Underhill, Evangelista told her that ''if we go on strike, we lose our jobs.'' Espino asked him ''if we vote no, what's going to happen?'' and he replied, ''you have your job.'' She further testified that Evangelista told her:

> If the Union would get in, [there] would be a decrease in our pay. We will be getting paid less than we were getting paid now. He put an example, as $4.50. We would be getting paid $4.50, because they start from zero to negotiate. We used to get paid $5.75.

6. Impression of surveillance

At the hearing General Counsel amended the complaint to allege that on July 11 Respondent created an impression among its employees that their union activities were under surveillance. The notes of Underhill's remarks on July 11 indicate that he told the employees that he knew that a few of them had not made up their minds. Underhill testified that he told the employees that ''I understand that a few of you have still not made up your mind, referring . . . to how to vote in the election.''

7. Threat of violence

At the hearing General Counsel also amended the complaint to allege that on June 26 by posting a notice to its employees, Respondent threatened its employees with violence if they selected the Union. The notice stated:

WHAT CAN THE UFCW GIVE YOU?

1. The *right to walk* a picket line.
2. The *right to go* out on strike.
3. The *right to pay* dues to the United Food and Food and Commercial Workers Union.
4. The *right to throw* brickbats at cars of non-strikers—even if they are your friends.
5. The *right to fear* for your safety and the safety of your loved ones if you oppose United Food and Commercial Workers Union strikes.
6. The *right to worry* over whether the United Foods and Commercial Workers Union will let you work!

8. Conclusions as to 8(a)(1) allegations

a. *Threats*

I credit Atilho's testimony that Evangelista told her Respondent is against the Union because ''we don't have [any] money'' and that ''trying to get money from us'' is like trying to get ''water from a stone.'' I believe that this statement threatened that the employees' efforts to organize would be an exercise in futility, in violation of Section 8(a)(1) of the Act. See *Evans Bros. Barber & Beauty Salons*, 256 NLRB 121, 128 (1981).

I also credit Cummings' testimony that Hughes told her if the Union were selected, ''they'd make it harder on us.'' The testimony was not rebutted. I find that this statement threatened employees with more onerous working conditions if the Union came in. This constitutes a violation of Section 8(a)(1) of the Act. See *Churchill's Supermarkets*, 285 NLRB 138, 140 (1987).

Several witnesses testified concerning Underhill's remarks on May 29 about putting on their ''walking shoes.'' As is understandable, each witness remembered the remarks a little differently. Underhill testified that he read from a prepared text. The speech, which is in evidence, stated that if the employees have their ''heart set'' on all of the union promises, ''you better buy your walking shoes now . . . because you're going to be on strike and on strike for a good long time.'' I find that Underhill's statement was within the range of permissible conduct during an election campaign and did not constitute a violation of Section 8(a)(1) of the Act. See *Blue Grass Industries*, 287 NLRB 274, 275 (1987). Accordingly, the allegation is dismissed.

I credit Espino's testimony that around June 15 Evangelista told her that ''if we go on strike, we lose our jobs.'' In *Baddour, Inc*., 303 NLRB 275 (1991), the Board found that Respondent's statements to bargaining unit employees that ''union strikers can lose their jobs'' conveyed to the employee the message that employment will be terminated. Such a statement unlawfully implies a threat of job loss as a result of a strike, in violation of Section 8(a)(1) of the Act.

I also credit Espino's testimony that around June 15 Evangelista told her ''if the Union would get in, [there] would be a decrease in our pay. This constitutes an unlawful threat of loss of benefits if the Union is selected, in violation of Section 8(a)(1) of the Act. See *Tra-Mar Communications*, 265 NLRB 664 (1982).

b. *Impression of surveillance*

On July 11 Underhill told the employees that ''I understand that a few of you have still not made up your mind'' on how to vote in the election. In testimony which was not controverted he stated that he knew this ''from employees who had come to me to ask for more information after we had given our speeches.'' General Counsel alleges that this constitutes an unlawful impression of surveillance, citing *Gupta Permold Corp.*, 289 NLRB 1234 (1988). To the contrary, I do not believe that case supports General Counsel's position. In that case a violation was found where the plant manager stated ''he knew that there were . . . 13 people at the Union meeting the previous day'' (id. at 1247). As stated in *Gupta* (id.):

> In circumstances in which, as here, a high-ranking company official makes reference to a specific number of employees at a union meeting for no apparent reason, which number corresponds or closely corresponds to the actual number in attendance, I find it reasonable for employees to assume that the company has that meeting under surveillance.

In the instant proceeding, Underhill merely said that he understood that a ''few'' employees had still not decided how to vote in the election. No specific number of employees was given. I do not find that employees would reasonably assume, based on that statement, that their union activities were under surveillance. *Gupta Permold Corp.*, supra, 289 NLRB at 1246. Accordingly, the allegation is dismissed.

c. *Threat of violence*

On June 26 Respondent posted a notice to employees entitled ''What Can the UFCW Give You?'' Among other things, the notice stated the ''right to throw brickbats at cars of non-strikers'' and the ''right to fear for your safety if you oppose the Union's strikes.'' The complaint, as amended, alleged that these statements constituted threats to employees with violence if they selected the Union.

In *General Dynamics Corp.*, 250 NLRB 719, 722 (1980), the Board stated:

> [We] find that the Employer's statements regarding the consequences of bargaining, such as strikes . . . were objectionable and *implied threats* inasmuch as these statements were intertwined with graphic descriptions

of long and violent strikes at other plants of the Employer. [Emphasis added.]

While Respondent cites *Clark Equipment Co.*, 278 NLRB 498 (1986), that case involved allegations of implied threats of loss of benefits and the inevitaibility of a strike if the employees selected the Union. There were no statements similar to those in the instant notice which suggested violence and ''fear for your safety'' if a strike was called by the Union. Under such circumstances, the Board held that respondent did not violate the Act. In this proceeding, however, I believe that the statements concerning throwing objects at automobiles and ''fear for your safety'' go beyond the permissible campaign materials envisioned by Section 8(c) of the Act. Accordingly, I find that by making such statements Respondent violated Section 8(a)(1) of the Act.

9. Discharge of Margarita Alicea

Margarita Alicea began her employment with Respondent in March. On May 2 she signed an authorization card on behalf of the Union. There is no indication in the record that she wore a union button or that she participated in any other union activity. On May 6 Alicea informed Hughes that she had violated probation and she was required to be in court the following day. On May 7 Alicea was sentenced and commenced serving a 37-day jail term. Evangelista credibly testified that on May 14 Hughes told him that Alicea had been absent from work for over a week and that she was in jail. Evangelista testified that new employees have a 90-day probationary period and as of May 14 Alicea was still within her probationary period. Evangelista instructed Hughes to terminate Alicea as of May 14. While Alicea testified that Hughes told her ''job would be there,'' Evangelista credibly testified that Hughes did not mention to him that she had told Alicea that the job would remain open. Evangelista also credibly testified that Respondent had never granted a leave of absence to a probationary employee and has never granted a leave of absence to any employee for the purpose of serving a jail sentence.

The only union activity that Alicea was involved in was the signing of a union authorization card. Thomas Wilkinson, the union representative, testified that 13 authorization cards were signed. On May 7 the names of the card signers were revealed to Evangelista and Forsythe. Except for Alicea, Coover, and Cummings, the other employees were not terminated. I find that General Counsel has not shown by a preponderance of the evidence that Alicea was discharged because of union activities. On the contrary, I find that she was a probationary employee and she was terminated because she did not report to work inasmuch as she was serving a jail sentence. Accordingly, the allegation is dismissed.

10. Discharge of Linda Cummings

Linda Cummings began employment with Respondent in July 1990. On April 25 she signed a union authorization card and began wearing a union button at work shortly thereafter.

Evangelista credibly testified that on August 14 a guest called to say that $30 was missing from his room. The guest normally left money in the nightstand drawer. Cummings had been assigned to clean that room. The next day Evangelista and Forsythe counted the money in the drawer and it totaled $56. After Cummings cleaned the room, Evangelista and Forsythe again counted the money and Evangelista testified that $2.50 was missing. Evangelista questioned Cummings about the missing money. Initially she denied taking the $2.50. However, after being asked a third time, Evangelista credibly testified that Cummings admitted taking the money and said, ''I needed it, I was going to put it back.'' Evangelista immediately discharged her. Forsythe corroborated Evangelista's testimony. Cummings testified that she was only asked whether she had taken $30 and denied having taken the $30.

I find that General Counsel has established a prima facia showing that union activity was a motivating factor in the decision to discharge Cummings. Cummings signed an authorization card and wore a union button. However, under *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989, once a prima facia showing has been made, the burden shifts to the employer to demonstrate that the ''same action would have taken place even in the absence of the protected conduct.'' I have credited Evangelista's and Forsythe's testimony that $2.50 was missing from the room after Cummings cleaned it. I have also credited their testimony that she admitted having taken the money. I find that she was terminated because of the theft. Accordingly, the allegation is dismissed.

11. Discharge of Debra Coover

Debra Coover Bennett (Coover) began working for Respondent in April 1990. During April 1991 she began wearing a union button. On August 7 during the morning break, several of the employees were sitting in the breakroom. Atilho credibly testified that three employees, including Coover, were smoking. Atilho also credibly testified that Ida Porretti lit a book of matches. The smoke alarm subsequently went off and Evangelista came into the room and asked ''which one of you set off the alarm? Atilho testified that ''nobody said anything.'' Atilho testified that about an hour later Hughes came into the guest room that Atilho was cleaning and told her ''I have two girls who are saying Debbie [Coover] did it.'' Atilho further testified that sometime subsequent to the incident, Hughes approached her and said that Evangelista wanted Atilho to say that she saw Coover set off the alarm. Atilho told Hughes that she couldn't do that because ''I never saw Debbie do it.'' Espino testified that she had been smoking directly under the smoke detector and that Coover did not light anything and hold it under the smoke detector.

Kim Schietinger worked as a housekeeper for Respondent during the summer of 1991. She testified that she is the girlfriend of Hughes' son and that at the time of the smoke detector incident Porretti took a piece of paper and held it up to the smoke detector and then Coover took the paper from her, lit it, and held it to the smoke detector, after which the fire alarm went off. Evangelista testified that after the alarm went off, he went into the breakroom and asked everyone ''in a general question'' what happened. He testified ''no one seemed to know anything.'' He then asked Hughes to talk to the employees. Evangelista testified that Hughes spoke to Schietinger and based on what Schietinger had told her, Hughes told Evangelista that Coover lit a piece of paper and held it to the smoke detector. Evangelista testified that he then decided to terminate Coover.

Atilho appeared to me to be a credible witness. I credit her testimony that Porretti lit a book of matches but that Coover did not set off the alarm. I note that Schietinger is the girlfriend of Hughes' son and I also note that Hughes did not testify.

Coover had worn a union button and was one of the employees who signed a union authorization card. I find that General Counsel has made a prima facia showing sufficient to support the inference that her union activity was a motivating factor in Respondent's decision to discharge her. I have credited Atilho's testimony that Coover was not the cause of the alarm going off. Evangelista came into the break room and asked the ''general'' question of who set off the alarm. There was no response. Evangelista questioned Coover, who denied having set off the alarm. He did not question the other employees individually. Had he done so, he may well have discovered that it was Porretti who lit the book of matches. I find that Respondent has not satisfied its burden under *Wright Line*, supra. Accordingly, I find that Respondent has violated the Act by discharging Debra Coover.

III. CHALLENGED BALLOTS

A. *Margarita Alicea*

The Board challenged the ballot of Alicea because her name did not appear on the eligibility list furnished by Respondent for the election. I have already found that Respondent did not unlawfully discharge Alicea. Accordingly, I find that as of the date of the election Alicea was not an employee of Respondent. The challenge to the ballot is therefore sustained.

B. *Scott Alter*

The Union challenged the ballot of Scott Alter on the ground that he was not employed during the agreed-upon eligibility period. Evangelista testified that Alter commenced employment with Respondent in February 1988 working as a part-time employee at the front desk. He had another full-time job and worked approximately 2 days per week until October 1990. At that time he was working a considerable amount of overtime at his full-time job and he asked Respondent not to schedule him for any work until his work at the full-time job ''slowed down.'' The records show that he worked only twice during January 1991 and once during February. While Evangelista testified that Alter returned as a regular part-time employee in May, in fact Alter worked only 5 hours from the beginning of May through July 12.

In determining whether an employee is a regular or a casual part-time employee the Board has taken into consideration such factors as regularity and continuity of employment. *Muncie Newspapers*, 246 NLRB 1088 (1979). The individual's relationship to the job must be examined to determine whether the employee performs unit work ''with sufficient regularity to demonstrate a community of interest with remaining employees in the bargaining unit.'' *Mid-Jefferson County Hospital*, 259 NLRB 831 (1981); *Pat's Blue Ribbons*, 286 NLRB 918 (1987). The record shows that Alter worked twice during January, once during February, and only 5 hours from May through July 12. Under such circumstances, I find that Alter was not a regular part-time employee but instead was a casual employee. See *Davison-Paxon Co.*, 185 NLRB 21, 23–24 (1970); *Trump Taj Mahal Casino*, 306 NLRB 294 (1992). Accordingly, I find that Alter was ineligible to vote in the election. The challenge to his ballot is therefore sustained.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commcerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening that employees' efforts to organize would be futile, by threatening employees with more onerous working conditions and loss of benefits if the Union were selected and by threatening loss of jobs as a result of a strike, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By threatening employees that they would be subject to violence if the Union were selected, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

5. By discharging Debra Coover Bennett because she engaged in union activities, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.

6. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. Respondent did not violate the Act in any other manner alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necesssary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discharged Debra Coover Bennett in violation of the Act, I find it necesssary to order Respondent to offer her full reinstatement to her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings that she may have suffered from the time of her discharge to the date of Respondent's offer of reinstatement. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

[2] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Milford Plains Limited Partnership d/b/a Hampton Inn, Milford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that their efforts to organize would be futile; threatening employees with more onerous working conditions and loss of benefits if they select the Union; threatening employees with loss of jobs as a result of a strike; and threatening employees that they would be subject to violence if the Union were selected.

(b) Discharging employees for activities protected by Section 7 of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Debra Coover Bennett immediate and full reinstatement to her former position or if such position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings, with interest, in the manner set forth in the remedy section above.

(b) Remove from its files any references to the unlawful discharge of Debra Coover Bennett and notify her in writing that this has been done and that the discharge will not be used against her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Milford, Connecticut, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the challenges to the ballots in Case 34–RC–1031 are sustained.

IT IS FURTHER ORDERED that those allegations of the complaint as to which no violations have been found are hereby dismissed.

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[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''